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October 5, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W. Room 222
Washington, D. C. 20554

Re: Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket 94-90

Dear Mr. Caton:

Herewith transmitted on behalf of Telephone and Data Systems, Inc. and its subsidiaries American Paging, Inc. and United States Cellular Corporation are an original and nine copies of their Comments in the Notice of Proposed Rulemaking in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

Peter M. Connolly

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Eligibility for the Special-	)	GN Docket No. 94-90
ized Mobile Radio Services	)	
and Radio Services in the	)	
220-222 MHz Land Mobile Band	)	
and Use of Radio Dispatch	)	
Communications	)	

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc. and its subsidiaries American Paging, Inc. ("API") and United States Cellular Corporation ("USCC") (collectively "TDS") hereby file their Comments on the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. TDS, API and USCC support allowing wireline common carriers and companies affiliated with such carriers to hold SMR and 220 MHz authorizations. Also, TDS supports repeal of the current prohibition on the provision of dispatch service by cellular and other common carrier licensees.

TDS would also note that API (through various wholly owned subsidiaries) has pending certain applications for new 800 MHz SMR systems. Each such application contains a request for waiver of Section 90.603(c) of the Commission's Rules. Such a waiver is necessary because although API and its subsidiaries are not telephone common carriers themselves, the parent of API, TDS, owns telephone common carriers. The public benefits from the grant of such waivers, and the unique scope of the services proposed are described in the waiver requests. This showing, along with API's lack of direct ownership in any telephone company, demonstrates

that the public interest would be served by granting the requested waivers.

Accordingly, TDS and API request that the FCC process and grant the API SMR applications while this proceeding is pending.

I. Introduction

In recent years, the FCC has, in various contexts, expressed its support for the general principle that the public benefits from facilities-based competition in the provision of telecommunications services. The three proposals of the NPRM, namely that the FCC allow wireline common carriers and companies affiliated with them to provide SMR and 220 MHz service and all common carriers to provide dispatch service, are in accord with this principle. Further, in 1993 Congress enacted the Omnibus Budget Reconciliation Act ("OBRA") which required "regulatory parity" among radio Commercial Mobile Radio Services licensees[1] and empowered the FCC to repeal the prohibition on the provision of dispatch service by common carrier licensees.

The OBRA thus powerfully reinforces the pro-competitive principle underlying recent FCC action with the complementary idea that the way to achieve competition is by eliminating outmoded regulatory barriers against the provision of service to the public by licensees willing to provide such service. In the absence of strong countervailing public interest reasons for continuing any prohibition on the provision of service, an end to such prohibi-

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[1] See Pub. L. No. 103-66, Title VI, 6002(b)(2)(A) (B), 107 Stat. 312, 392 (1993).

tions is mandated by the general principle referred to above. And, as will be shown below, an end to the prohibitions at issue here is also supported by the specific circumstances of the relevant services.

II. The Prohibitions Should be Ended to Establish Competitive Parity In The Provision of CMRS Services.

With the replacement of the separate common carrier and private carrier regulatory classifications by the OBRA, the Commission now has a mandate to end the above prohibitions in consideration of the legislative objectives of the OBRA.[2] Congressional objectives supporting enhanced competitive service opportunities logically require that "parity" of eligibility opportunities among common carriers be established to achieve these objectives. Currently common carriers other than those engaged in telephone common carrier activities are not restricted under existing Sections 90.603(c) and 90.703(c) of the Commission's Rules from providing SMR and 220 MHz services. The fact that telephone common carriers (and affiliated companies) are restricted while other common carriers are not is clearly contrary to the Congressional mandate promoting competitive market conditions.[3] Particularly

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[2] See new Section 302(c)(1)(C) of the Communications Act. ("...As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services.").

[3] This regulatory disparity appears to be both unfair and not rationally linked to any currently discernable public policy objective. For example, a telephone exchange carrier serving a remote area of Maine, would under a literal reading of the rules,

considering that enhancement of opportunities for service to the public is the fundamental goal of regulatory "parity," the participation of new competitors will only benefit consumers in terms of competitive rates, new services and rapid deployment of new technologies and accordingly should be authorized in the public interest.

III. An End to the Prohibitions Will Promote Parity of Regulatory Treatment for Telephone Common Carriers (and Affiliated Companies) in the Part 90 and Part 22/24 Radio Services.

The Commission's conclusion presumptively to classify interconnected SMR service and 220 MHz service as Commercial Mobile Radio Service ("CMRS"), also supports an end to eligibility restrictions. While the origins of the Commission's special policies regarding restricted telephone common carrier eligibility are not clear, it is possible that, at least in part, they evolved out of the common carrier/private carrier classifications which pre-dated the OBRA. If so, the fact that the predominant SMR and 220 MHz services are now presumptively classified as common carrier offerings, no different in all important respects from many other radio services where telephone common carriers are fully eligible for licensing, should compel the elimination of eligibility restrictions in the SMR and 220 MHz services as well.

It seems self-evident that the public interest is not served if companies like TDS and its subsidiary API, are selectively precluded from using certain technologies, in this case SMR and 220

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be disqualified from holding an SMR or 220 MHz license in an unrelated area such as Los Angeles.

MHz technologies, to provide new services simply because they are affiliated with one or more telephone common carriers. A provider's choice of technologies rightfully should be based on service requirements, propagation, cost and other technical factors which will permit that provider to be cost and spectrum efficient. We believe that one of the implicit messages delivered by Congress in the OBRA was that the Commission should break down existing barriers in its rules which impede or block the implementation of efficient technology selection options by otherwise qualified providers. In the case of both the SMR and 220 MHz technologies, adopting the NPRM's tentative recommendations will accomplish this result with the obvious benefits to consumers described above.

IV. And End to the Prohibitions Will Not Harm or Jeopardize the Continued Availability of Fair and Equal LEC Interconnection Opportunities and Will Not Result in Unfair Cross Subsidies.

As is noted in the NPRM (p. 12), continuing the ban on wireline entry into the SMR and 220 MHz services might be justified if the wireline restrictions served to prevent either discrimination in the provision of wireline interconnection to non-affiliated SMR and 220 MHz licensees on unfair cross-subsidization of SMR and 220 MHz services.

However, as is also noted in the NPRM, the FCC has made clear that the interconnection obligations of local exchange carriers ("LECs") under Section 201 of the Communications Act now also require LECs to provide "reasonable and fair interconnection" to

CMRS licensees.[4] If the origins of the Commission's policies reflected in Sections 90.603(c) and 90.703(c) of its rules lie in an attempt to preserve fair and equal LEC interconnection opportunities for SMR and 220 MHz licensees, the reclassification of SMR and 220 MHz services as CMRS and the related restatement of LEC interconnection obligations to CMRS licensees in the Commission's Regulatory Treatment Proceedings with respect to CMRS providers assure such opportunities. There is thus no longer any need to maintain restrictive eligibility policies for SMR or 220 MHz services to prevent unfair or discriminatory interconnection practices by any LEC.

And, with respect to cross subsidization, as is also pointed out in the NPRM, the application of the FCC's joint cost and affiliate transaction rules to all CMRS licensees should eliminate any legitimate concern that the public interest would be harmed by wireline carrier entry into SMR and 220 MHz services.

TDS also agrees with NPRM that the imposition of structural separation requirements on common carriers providing SMR and 220 MHz services in addition to requiring them to comply with rules referred to above would be excessive and unnecessary. Such requirements would have a tendency to undermine rather than promote vigorous competition by discouraging such carriers from providing SMR and 220 MHz services.

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[4] Commission's Second Report and Order, (FCC 94-31) in GN Docket No. 93-252 ("Regulatory Treatment Proceedings"), released March 7, 1994, paras. 228-230.

V. The FCC Should Exercise its Discretion to Eliminate the Ban on Common Carriers Providing Dispatch Service.

As Congress recognized when it amended the Communications Act to empower the FCC to repeal the ban on the provision of dispatch service by common carriers licensed after January 1, 1982, that ban has become an anachronism. Cellular, paging, SMR and 220 MHz licensees are now to be considered part of the CMRS. And while that fact does not mean that all CMRS licensees must necessarily be subject to exactly the same regulatory obligations, it should certainly mean that in the absence of any strong countervailing public interest reasons to continue existing prohibitions, all CMRS licensees should have equivalent opportunities to provide service to the public.

Clearly, as the NPRM notes, a repeal of the dispatch ban would likely lead to more dispatch service offerings, more innovative service offerings and lower costs for dispatch customers.

In response to the FCC's market specific questions concerning potential entry of cellular and other common carriers into dispatch, TDS, USCC and API would carefully evaluate opportunities and would consider entering the dispatch market where it seemed commercially reasonable.

Conclusion

The restrictive eligibility policies embodied in Sections 90.603(c) and 90.703(c) concerning wireline carrier entry into SMR and 220 MHz service are an unnecessary and counterproductive vestige of the statutory framework modified by the OBRA. The

Commission's decisions implementing the OBRA make clear how far policy has evolved to promote regulatory parity, expanded opportunities and a truly competitive communications marketplace for all CMRS licensees. The benefits to be achieved for consumers from enhanced competition in the provision of SMR and 220 MHz service should be paramount in the Commission's considerations. Thus, all CMRS providers should be permitted to provide those services.

Further, the FCC should also exercise its discretion to permit common carriers to offer dispatch services.

Finally, TDS and API also request that the FCC process and grant pending applications by API and similarly situated carriers requesting a waiver of Section 90.603(c) of the FCC's Rules, to provide 800 MHz SMR services while this proceeding is pending.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.
AMERICAN PAGING, INC.
UNITED STATES CELLULAR CORPORATION

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